

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

WILLIE D. BEASLEY, #870844	§	
VS.	§	CIVIL ACTION NO. 6:13cv625
CHARLES O. MARSHALL, ET AL.	§	

ORDER OF DISMISSAL

Plaintiff Willie D. Beasley, a prisoner confined in the Texas prison system, proceeding *pro se* and seeking to proceed *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the complaint should be dismissed pursuant to the “three strikes” provisions of 28 U.S.C. § 1915(g). The Plaintiff has filed objections.

The Plaintiff argued in his objections that he should be permitted to proceed in light of the exception to § 1915(g). The exception requires him to show that he was “under imminent danger of serious physical injury,” which the Fifth Circuit has interpreted as meaning he must show that he was under imminent danger of serious physical injury at the time he filed the complaint or filed a motion to proceed *in forma pauperis*. *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998). In his complaint and objections, the Plaintiff alleged that he was threatened in February 2013. He did not show that he was under imminent danger of serious bodily injury when he filed the complaint or the motion to proceed *in forma pauperis* in September 2013 or even when he signed the complaint on August 30, 2013. He has not shown that the exception to § 1915(g) applies in this case.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections by the Plaintiff are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the complaint is **DISMISSED** with prejudice for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). It is further

ORDERED that the Plaintiff's motion to proceed *in forma pauperis* (docket entry #2) is **DENIED**. The Plaintiff may resume the lawsuit if he pays the entire filing fee of \$400 within thirty days after the entry of this order. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 7th day of October, 2013.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE